



REPUBLIC OF KENYA



**In re Estate of Joseph Mukuna Kanina (Deceased) (Succession Cause  
3385 of 2014) [2023] KEHC 24494 (KLR) (Family) (27 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24494 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY**

**SUCCESSION CAUSE 3385 OF 2014**

**MA ODERO, J**

**OCTOBER 27, 2023**

**BETWEEN**

**MARY MWIHAKI MUKUNA ..... 1<sup>ST</sup> APPLICANT**

**ESTHER WAHU MUKUNA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**JONAH KANINA MUKUNA ..... 1<sup>ST</sup> RESPONDENT**

**SALOME WATIRI MUKUNA ..... 2<sup>ND</sup> RESPONDENT**

**LEAH WANJIKU MUKUNA ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before this Court for determination is the Motion of application dated 26<sup>th</sup> September 2022 by which the Applicant Mary Mwihaki Mukuna and Esther Wahu Mukuna seeks the following orders:-
  - “ a. The Administrators be compelled by this Honourable Court to sign and/or execute all the requisite documents for transmission of the properties of the deceased in favour of the beneficiaries and in default this Honourable Court do authorize the Deputy Registrar to sign and/or execute the requisite documents for such transmission for the Applicants share pursuant to the Certificate of Confirmation Grant issued on 14<sup>th</sup> April 2017.
  - b. In the alternative and without prejudice to prayer (a) above, the Grant of Letter of Administration Intestate made to the said Jonah Kanini Mukuna, Salome Watiri Mukuna And Leah Wanjiku Mukuna on 4<sup>th</sup> January, 2016



be amended to replace the said administrators with the Applicants – Mary Mwihaki Mukuna And Esther Wahu Mukuna.

- c. This Honourable Court be pleased to issue any or further orders that this Honourable Court may deem fit and just to grant in the circumstances.
  - d. The costs of this application be costs in the cause.
2. The application which was premised upon Section 43, 83 (g) of the *Law of Succession Act*, and Rules 72 and 73 of the *Probate and Administration Rules* and all other enabling provisions of law was supported by the Affidavit of even date sworn by the two Applicants.
  3. The Respondents Jonah Kanini Mukuna, Salome Watiri Mukuna and Leah Wanjiku Mukuna opposed the application through the Grounds of opposition dated 16<sup>th</sup> January 2023 and the Replying Affidavit dated 6<sup>th</sup> February, 2023.
  4. The matter was canvassed by way of written submissions. The Applicants filed the written submissions dated 28<sup>th</sup> February 2023 whilst the Respondents relied upon their written submissions dated 2<sup>nd</sup> May 2023.

### **Background**

5. This Succession Cause relates to the estate of the late Joseph Mukuna Kanina who died intestate on 19<sup>th</sup> October 2013 at Coptic Hospital in Nairobi. The Deceased was survived by the following persons:-
  - (i) Jonah Kanina Mukuna - Son
  - (ii) John Kimani Mukuna - Son
  - (iii) Anne Nduta Mukuna - Daughter
  - (iv) Naomi Njeri Mukuna - Daughter
  - (v) Salome Watiri Mukuna - Daughter
  - (vi) Jedidah Wambui Mukuna - Daughter
  - (vii) Esther Wahu Mukuna - Daughter
  - (viii) Leah Wanjiku Mukuna - Daughter
  - (ix) Mary mwihaki Mukuna - Daughter
  - (x) Ruth Wambui Mukuna - Daughter
6. The estate of the Deceased comprised of several properties.
7. Following the demise of the Deceased Grant of Letters of Administration Intestate was on 4<sup>th</sup> January 2016 made to the three Respondents/Administrators. The Grant was fully confirmed on 14<sup>th</sup> April 2017.
8. The Applicants allege that from the time the Grant was confirmed the Administrators have failed and/or declined to conclude the administration of the estate of the Deceased. That due to the inaction on the part of the Administrators the applicants filed an application dated 12<sup>th</sup> February 2012 seeking to compel the Administrators to conclude the distribution of the estate.



9. On 20<sup>th</sup> April 2021 Hon. Justice Muchelule (as he then was) gave Respondents Six (6) months to finalize distribution of the estate. However this order was not complied with. The Applicants state that despite several pleas and exhortations the Respondents remain reluctant to conclude distribution of the estate causing the Applicants who are unemployed and struggling financially untold pain and anguish.
10. The Applicants now pray that the Respondents be compelled to execute all necessary documents for transmission of the properties of the Deceased to the various beneficiaries. In the alternative the Applicants pray that the Grant issued to the Respondents be amended to remove the Respondents as Administrators of the estate and to replace them with the two Applicants as Administrators.
11. As stated earlier the application was opposed. The Respondents insist that they have diligently and faithfully carried out their duties as administrators of the estate of the Deceased. That they have involved all ten (10) beneficiaries in the said administration of the estate. The Respondents state that they are currently pursuing the subdivision and transmission of each property to the assigned beneficiary which process is taking longer than had been anticipated. The Respondents state that to date over 70% of the estate has been distributed.
12. The Respondents state that the two Applicants are not fit to be appointed as Administrators of the estate. They urge the court to dismiss this application in its entirety.

### **Analysis and Determination**

13. I have carefully considered the application before this court, the Reply filed thereto as well as the written submissions filed by both parties.
14. It is not in dispute that following the demise of the Deceased the three Respondents were appointed as Administrators of the estate. It is common ground that a certificate of confirmed Grant setting out the mode of distribution of the estate was issued on 19<sup>th</sup> June 2017. From that date the Administrators should have actively embarked on distributing the estate in terms of the confirmed Grant.
15. Personal Representatives of an estate have a statutory duty to administer and distribute the estate in terms of the confirmed Grant. Indeed Section 83 of the *Law of Succession Act*, Cap 160, laws of Kenya sets out the obligations of a personal representative. Section 83 (g) of the *Act* provides that a personal representative
  - “(g) Within Six months from the date of confirmation of the Grant or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;
16. The Respondent herein have failed to comply with the above provisions. Even after being directed to conclude distribution of the estate within Six (6) months the Respondents still failed to comply. Neither have they availed any statement of Accounts regarding the administration of the estate.
17. It is now five (5) years down the line and the distribution is yet to be concluded. It would appear that there is some laxity on the party of the Administrators. I do direct that the Respondent/Administrators do execute all requisite documents to transmit the estate properties to the beneficiaries named in the confirmed Grant within thirty (30) days.
18. The Applicants prayed that in the alternative the Grant be amended to remove the Respondents as Administrators and to have the Applicants replace them. It is not possible to effect the removal of



Administrators to an estate by way of an amendment. If this is what the Applicants seek then they must file a substantive summons for revocation of Grant. Such substitution of the Administrators would also require the consent of ALL the beneficiaries before it can be effected. Accordingly this alternative prayer is misplaced and is hereby dismissed.

19. Finally, I do allow the notice of Motion dated 26<sup>th</sup> September 2022 in the following term:

- (1) The Administrators of the estate of the Deceased be and are hereby directed to execute within thirty (30) days all requisite documents for transmission of the properties of the Deceased in favour of the beneficiaries in accordance with the certificate of confirmed Grant issued in this matter on 14<sup>th</sup> April 2017.
- (2) In event of failure to comply within thirty (30) days then the Hon. Deputy Registrar – Family Division is authorized to execute the requisite documents on behalf of the Administrators.
- (3) I further direct that the Respondent/Administrators file in court within Ninety (90) days a full and accurate account of all dealings with the estate and of completed administration effective from 14<sup>th</sup> April 2017.
- (4) This being a family matter each party will meet their own costs.

**DATED IN NAIROBI THIS 27<sup>TH</sup> DAY OF OCTOBER, 2023.**

**MAUREEN A. ODERO**

**JUDGE**

